

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

JACOB SILVERMAN,
Plaintiff,
vs.
THE CITY AND COUNTY OF SAN
FRANCISCO et. al.,
Defendants.

Case No: C 11-1615 SBA
ORDER
Docket 81, 90, 91

14 The parties are presently before the Court on Plaintiff Jacob Silverman's ("Plaintiff")
15 administrative motion for a two-month continuance of the jury trial date and all associated
16 dates under Civil Local Rule 7-11 and Rule 16 of the Federal Rules of Civil Procedure.
17 Dkt. 81.¹ The City and County of San Francisco and various law enforcement officers
18 (collectively, "Defendants") oppose Plaintiff's administrative motion for a continuance.
19 Dkt. 85. Also before the Court is Plaintiff's administrative motion to stay proceedings, and
20 the Law Office of Green & Green, LLP's ("Green & Green") ex parte application to
21 withdraw as counsel of record for Plaintiff. Dkt. 90, 91. Defendants have not filed an
22 opposition or statement of non-opposition to Plaintiff's administrative motion to stay
23 proceedings or to Green & Green's ex parte application to withdraw as counsel of record for
24 Plaintiff as required by Civil Local 7-3(b). Having read and considered the papers filed in
25 connection with these matters and being fully informed, the Court hereby DENIES

¹ Alternatively, Plaintiff requests, without citation to evidence or legal analysis, "remedial remedies" such as an order precluding any testimony at trial of a defendant who refuses to attend their noticed deposition. See Dkt. 81, 87.

1 Plaintiff's administrative motion for a continuance, DENIES Plaintiff's administrative
 2 motion to stay proceedings, and DENIES Green & Green's ex parte application to withdraw
 3 as counsel of record for Plaintiff, for the reasons stated below.

4 **I. DISCUSSION**

5 **A. Administrative Motion for a Continuance**

6 Plaintiff's administrative motion for a continuance seeks a two-month continuance of
 7 the jury trial date and all associated dates. Dkt. 81. Plaintiff's motion, however, is an
 8 improper administrative motion under Civil Local Rule 7-11 because the relief Plaintiff
 9 seeks is not within the category of "miscellaneous administrative matters, not otherwise
 10 governed by a federal statute, federal or local rule or standing order of the assigned judge,"
 11 as required by Civil Local Rule 7-11.² Plaintiff offers no authority to support his attempted
 12 use of Civil Local Rule 7-11. Indeed, a motion for a continuance, which seeks to modify a
 13 pretrial scheduling order must be brought pursuant to Civil Local Rule 6-3 and satisfy the
 14 good cause standard under Rule 16. A request that fails to comport with procedures set
 15 forth in a district court's local rules may be summarily denied. See Grove v. Wells Fargo
 16 Fin. Cal., Inc., 606 F.3d 577, 582 (9th Cir. 2010) (upholding district court's denial of
 17 motion to tax costs which was not in compliance with the court's local rules).

18 Furthermore, Plaintiff's administrative motion does not comply with the meet and
 19 confer requirement set forth in this Court's Standing Orders. See Standing Orders ¶ 5. In
 20 the declaration filed in support of the instant motion, Plaintiff's counsel attests that he
 21 "inquired" whether defense counsel would jointly move to continue the trial and associated
 22 dates. Swanson Decl. ¶ 15. Defense counsel submitted a declaration indicating that this
 23 "inquiry" was an e-mail at approximately 5:00 p.m. on Friday October 19, 2012, advising
 24 Defendants that Plaintiff intends on filing a unilateral request for a continuance of the trial
 25 date and associated dates if defense counsel fails to respond to his request for the parties to
 26

27 ² Proper administrative motions include "matters such as motions to exceed
 28 otherwise applicable page limitations or motions to file documents under seal." Civ. L.R.
 7-11.

1 file a joint request for a continuance by Monday morning. See Baumgartner Decl. ¶ 24,

2 Exh. D. The e-mail sent by Plaintiff's counsel states:

3 In light of the recent discovery you just provided, your inability to schedule
4 critical depositions prior to the date discovery is set to close, your failure to
5 provide videos related to the incidents on April 14 and 22, the policies
6 related to the videos, and the failure to provide housing logs, I see no other
7 alternative but to request that the Court continue the trial date and all other
8 associated dates. I feel it necessary to notice all depositions to be completed
9 prior to the October 31 deadline in order to be safe in the event we do not
10 get the necessary continuance. To that end, please consider this a meet and
11 confer request for us to engage in a joint request for a continuance of the
12 trial date and associated dates.

13 . . .

14 If I do not hear from you Monday morning I will have no choice but to file a
15 unilateral request for relief.

16 Id.

17 On Monday October 22, 2012, defense counsel responded by e-mail and regular
18 mail, stating that she does not object to continuing the trial date or the date for expert
19 disclosure, but is unwilling to agree to allow discovery beyond the discovery cut-off date
20 except for certain depositions the parties had already agreed to. Baumgartner Decl. ¶ 25,
21 Exh. E. Plaintiff filed the instant motion on October 22, 2012. Dkt. 81.

22 Given the length of the continuance requested by Plaintiff and the Defendants'
23 representation that they do not oppose continuing the trial date or the expert disclosure date
24 and are amenable to allowing certain fact discovery to take place after the close of fact
25 discovery, it appears that the parties could have resolved many, if not all, of the issues
26 giving rise to the instant motion had they met and conferred in person or by telephone prior
27 to the filing of the motion. As contemplated by the Court's Standing Orders, until such
time as the parties have meaningfully met and conferred to discuss the issues giving rise to
the instant motion, it is premature to conclude that there exists a dispute which requires the
Court's intervention. The meet and confer requirement is essential to conserving the
limited time and resources of the Court and the parties by obviating the filing of
unnecessary motions.

28 Accordingly, for the reasons stated above, Plaintiff's administrative motion for a

1 continuance is DENIED without prejudice. Plaintiff's alternative request for "remedial
 2 remedies," such as an order precluding any testimony at trial of a Defendant who refuses to
 3 attend their noticed deposition, is DENIED. Because this request is not supported by
 4 citation to authority and legal analysis, it lacks merit. See Indep. Towers of Wash. v.
 5 Wash., 350 F.3d 925, 929 (9th Cir. 2003) ("Our adversarial system relies on the advocates
 6 to inform the discussion and raise the issues to the court.").

7 **B. Administrative Motion to Stay Proceedings**

8 Plaintiff's administrative motion to stay proceedings seeks a stay of the instant action
 9 "to stop the clock briefly[] to allow time for [Plaintiff] to secure new counsel, who can
 10 finalize the limited remaining discovery in this matter, and move forward on his behalf."
 11 Dkt. 90. This motion fails for several reasons. First, the motion is an improper
 12 administrative motion because a motion to stay is not a miscellaneous administrative matter
 13 within the meaning of Civil Local Rule 7-11. Second, the motion does not contain a
 14 certification that the parties have complied with the meet and confer requirement in this
 15 Court's Standing Orders. Standing Orders ¶ 5. As discussed above, compliance with this
 16 requirement is essential to the parties' representation that there is a dispute which requires
 17 the Court's resolution. Third, as discussed below, because Green & Green has failed to
 18 demonstrate that withdrawal as counsel of record for Plaintiff is appropriate, a stay of the
 19 instant action to allow Plaintiff time to secure new counsel is not warranted. Accordingly,
 20 Plaintiff's administrative motion to stay proceedings is DENIED without prejudice.

21 **C. Ex Parte Application to Withdraw**

22 Green & Green has filed a less than one-page ex parte application seeking to
 23 withdraw as counsel of record for Plaintiff on the ground that "an insurmountable conflict
 24 of interest has been discovered requiring withdrawal." Dkt. 91. Green & Green also seeks
 25 to withdraw on the ground that Plaintiff has breached "client responsibilities." In the
 26 alternative, Green & Green requests an ex parte hearing. Id.

27 The Court's Civil Local Rules authorize an attorney to withdraw as counsel of record
 28 if: (1) written notice has been given reasonably in advance to the client and all other parties

1 in the action; and (2) the attorney obtains leave of Court. Civ. L.R. 11-5(a); see Darby v.
 2 City of Torrance, 810 F.Supp. 275, 276 (C.D. Cal. 1992) (an attorney representing a client
 3 may not withdraw except by leave of court). In addition, the Civil Local Rules provide that
 4 when withdrawal by an attorney from an action is not accompanied by simultaneous
 5 appearance of substitute counsel or agreement of the party to appear pro se, leave to
 6 withdraw may be subject to the condition that papers may continue to be served on counsel
 7 for forwarding purposes, unless and until the client appears by other counsel or pro se. Civ.
 8 L.R. 11-5(b).

9 In this district, the conduct of counsel, including the withdrawal of counsel, is
 10 governed by the standards of professional conduct required of members of the State Bar of
 11 California. Civ. L.R. 11-4(a)(1); see Nehad v. Mukasey, 535 F.3d 962, 970 (9th Cir. 2008)
 12 (applying California Rules of Professional Conduct to attorney withdrawal). California
 13 Rule of Professional Conduct 3-700(B)-(C) allows withdrawal in certain specified
 14 circumstances, including where the client "renders it unreasonably difficult for [counsel] to
 15 carry out the employment effectively." However, before counsel can withdraw, counsel
 16 must comply with California Rule of Professional Conduct 3-700(A)(2), which provides
 17 that counsel shall not withdraw from employment until they have taken reasonable steps to
 18 avoid reasonably foreseeable prejudice to the rights of the client, including giving due
 19 notice to the client, allowing time for employment of other counsel, complying with rule 3-
 20 700(D) (regarding papers), and complying with applicable laws and rules. See El Hage v.
 21 U.S. Sec. Assocs., Inc., 2007 WL 4328809, at *1 (N.D. Cal. 2007). The decision to permit
 22 counsel to withdraw is within the sound discretion of the trial court. See United States v.
 23 Carter, 560 F.3d 1107, 1113 (9th Cir. 2009).

24 Green & Green's application to withdraw as counsel of record for Plaintiff is both
 25 procedurally and substantively deficient. The application is procedurally deficient because
 26 Green & Green has failed to demonstrate that an ex parte application to withdraw as
 27 counsel of record is authorized under the Civil Local Rules. "[A] party may file an ex parte
 28 motion . . . only if a statute, Federal Rule, local rule or Standing Order authorizes the filing

1 of an ex parte motion in the circumstances and the party has complied with the applicable
 2 provisions allowing the party to approach the Court on an ex parte basis. The motion must
 3 include a citation to the statute, rule or order which permits the use of an ex parte motion to
 4 obtain the relief sought." Civ. L.R. 7-10. Green & Green offers no authority to support its
 5 attempt to withdraw by filing an ex parte application.

6 Green & Green's application is substantively deficient because it does not comply
 7 with Civil Local Rule 11-5 or the California Rules of Professional Conduct. In its
 8 application, Green & Green asserts that the firm has not advised Plaintiff in writing of its
 9 intent to withdraw as counsel of record because they cannot locate him. Green & Green,
 10 however, has failed to explain the actions it has taken, if any, prior to filing the instant
 11 motion to locate Plaintiff and/or to notify him of the firm's intent to withdraw. As such,
 12 Green & Green has not taken reasonable steps to avoid reasonably foreseeable prejudice to
 13 the rights of Plaintiff, including giving him due notice of the firm's intent to withdraw and
 14 allowing time for employment of other counsel. Nor has Green & Green articulated with
 15 sufficient specificity its reasons for seeking to withdraw as counsel of record for Plaintiff or
 16 cited authority justifying withdrawal. Instead, Green & Green simply states, without
 17 citation to authority or elaboration, that "[a]n insurmountable conflict of interest has been
 18 discovered requiring withdrawal." Although not requested in the body of the application,
 19 the caption indicates that Green & Green also seeks to withdraw on the ground that Plaintiff
 20 has breached "client responsibilities." Absent a stipulation or specific explanation of the
 21 "insurmountable conflict" and the "client responsibilities" that Plaintiff has breached, it is
 22 impossible for the Court to determine whether withdrawal is appropriate. Accordingly,
 23 Green & Green's motion to withdraw as counsel of record for Plaintiff is DENIED without
 24 prejudice. Green & Green's alternative request for an ex parte hearing is DENIED.

25 **II. CONCLUSION**

26 For the reasons stated above, IT IS HEREBY ORDERED THAT:

27 1. Plaintiff's administrative motion for a continuance is DENIED without
 28 prejudice to filing of a motion that complies with the Civil Local Rules and this Court's

1 Standing Orders.

2 2. Plaintiff's administrative motion to stay proceedings is DENIED without
3 prejudice to the filing of a motion that complies with the Civil Local Rules and this Court's
4 Standing Orders.

5 3. Green & Green's motion to withdraw as counsel of record for Plaintiff is
6 DENIED without prejudice to the filing of a motion that complies with the Civil Local
7 Rules and the California Rules of Professional Conduct.

8 4. The parties are advised that prior to the filing of any future motion, they shall
9 meet and confer in person or by telephone as required by this Court's Standing Orders. All
10 future motions shall include a certification that the parties have complied with the meet and
11 confer requirement. The Court cautions the parties that the Court may strike any motion
12 papers that do not comply with this rule.

13 5. This Order terminates Docket 81, 90, and 91.

14 IT IS SO ORDERED.

15 Dated: 12/3/12



SAUNDRA BROWN ARMSTRONG
United States District Judge

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